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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,863	08/22/2005	Andras Goczey	1202P010	5817
8791 7590 08/11/2008 BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP 1279 OAKMEAD PARKWAY SUNNYVALE, CA 94085-4040				
EXAMINER				
HURLEY, KEVIN				
ART UNIT		PAPER NUMBER		
3611				
MAIL DATE		DELIVERY MODE		
08/11/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/518,863

Applicant(s)

GOCZEY ET AL.

Examiner

KEVIN HURLEY

Art Unit

3611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 9-20 is/are pending in the application.
- 4a) Of the above claim(s) 10-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8 July 2008 has been entered.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claim(s) 1-6, and 9 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The limitation in claim 1 “the side plates extend upwards, advantageously above a knee of a person standing on one or both of the foot plates” and in claim 9 “wherein at the height of the shins of the person using the device there is a supporting plate” specifically limits the claim to particular part of the human body. A claim directed to or including within its scope a human being or attributes of a human being is not patentable subject matter. See MPEP §2105 and 1077 OG 24 (April 21, 1987).

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-6, 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 line 11 recites “the side plates (7,8) extend upwards, advantageously above the knee of a person standing on one or both of the foot plates”. This limitation is indefinite since it would be dependent on the size of the person using the device.

In claim 4 line 3 it is unclear what is meant by “maximum distance (c) from the axle of the wheel ensuring operation of the device at a distance (m) from the ground...” It would appear that this would encompass any distance desired since it depends on what is considered “operation of the device”. The device could operate simply as a paperweight, for example.

Claim 9 line 2 recites “wherein at the height of the shins of the person using the device there is a supporting plate fixed to each of the side plates.” This limitation is indefinite since it would be dependent on the size of the person using the device.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-4, 6 (as understood) is rejected under 35 U.S.C. 102(b) as being anticipated by McKissick 2,971,773.

McKissick discloses a sport device that is propelled by kicking away from a solid surface comprising:

a wheel (48) that can be rotated around an axle (55);

foot plates (32) extending outwards under the level of said axle by said wheel having two side plates (36) fixed to the axle of the wheel and the foot plates rigidly fixed to a lower end range of to the side plates, the lower end range of the side plates being formed so that the side plates extend upwards; the side plates being fixed together as a yoke (18) via a connection rib, wherein the foot plates are positioned at a distance from the axle of the wheel; wherein the side plates are formed so that they only partly cover a side of the wheel where in the vicinity of the wheel axle their width is smallest (at 50), and from this range their width increases downwards and upwards.

Note that the limitation "so as to provide a friction-supporting function for the knee and/or a lower leg of the person" indicates an intended use for the foot plates. A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

Allowable Subject Matter

8. Claim 5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, and 35 U.S.C. § 101 set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

9. Applicant's arguments filed 8 July 2008 have been fully considered but they are not persuasive.

With regard to the indefiniteness rejection of claim 1, applicant has argued that the examiner has confused indefiniteness of the claim with breadth of the claimed elements. The examiner disagrees in that relating sizes of a structural element to part of an unspecified human being is inherently indefinite. Since the size of a generically recited human being is not know, the size of the claimed structural element is unknown as well. The examiner maintains the same reasoning for claim 9 as well.

Regarding the rejection of claims 1-4 and 6 as being anticipated by McKissick, applicant has argued that the monocycle of McKissick must have a yoke, but that claim 1 does not require a yoke. This is immaterial to anticipation. To anticipate the claim, McKissick must disclose each and every limitation of the claim, which the examiner maintains it does, as explained in the rejection above. Applicant has also argued that the side plates of McKissick do not reach above the rider's knees. As noted above, this limitation is indefinite and renders the claim non statutory as well. McKissick discloses the definite limitations of the claim.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN HURLEY whose telephone number is (571)272-6646. The examiner can normally be reached on Monday-Friday 9:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 571-272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin Hurley/
Primary Examiner, Art Unit 3611

August 7, 2008